

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,463
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her Medicaid benefits. The issue is whether the petitioner's husband must be considered a member of the petitioner's household and his income counted in determining her eligibility. The petitioner was the subject of Fair Hearing No. 16,086, which presented nearly the same issue regarding the petitioner's eligibility for ANFC. The findings made in that case, which are not in dispute, are incorporated by reference and form the basis of most of the findings below.

FINDINGS OF FACT

1. The petitioner, her husband, and their daughter came to the United States from Russia in 1995, and originally settled in New York City, where the petitioner's husband found work.

2. In September 1998, the petitioner moved to Vermont with her daughter because of health reasons. Her husband remained behind in New York to continue working.

3. The petitioner applied for and was granted ANFC and Food Stamps in Vermont for herself and her daughter effective September 1998.

4. The petitioner found a job in November 1998, and went off ANFC at that time.

5. In February 1999, the petitioner had surgery and had to stop working. She reapplied for and was granted ANFC, Medicaid, and Food Stamps for herself and her daughter.

6. In April 1999, the petitioner began working part time, and continued to receive benefits.

7. In June 1999, the petitioner's husband was laid off from his job in New York, and he came to Vermont to join the petitioner and their daughter. The petitioner reported his arrival to the Department, and he was added to the petitioner's ANFC and Food Stamp grants while he looked for work in Vermont.

8. Within a month, however, the husband's former employer in New York offered him his old job back, and the husband decided to return to New York.

9. The petitioner reported her husband's return to work in New York to the Department, but based on information provided by the petitioner the Department determined that the husband was still a member of the petitioner's household and that his income was considered available to the household. The Department determined that this income was in excess of the program maximums and it terminated the petitioner's

eligibility for ANFC and Food Stamps. This decision was affirmed by the Human Services Board in Fair Hearing No 16,086 (see infra).

10. Sometime in the spring of 2000 the Department notified the petitioner that she was no longer eligible for Medicaid.<sup>1</sup>

11. The petitioner does not dispute that if her husband's income from his job in New York is considered available to the household, she is over income for Medicaid. However, the petitioner maintains, as she did in Fair Hearing No. 16,086, that her husband uses all his income to maintain himself in New York, and that this income is not available to her in Vermont. She again admits, however, that she and her husband are not "separated" as a married couple and that her husband has visited frequently. She now also states that her husband is planning to return to live with her in Vermont within a month.<sup>2</sup>

12. The petitioner has not sought any child support from her husband during his absence, and she again admits that she does not intend to do so. She feels he needs all his earnings to support himself in New York, and that she should be able to receive Medicaid in Vermont without considering his income.

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<sup>1</sup> It is assumed that the petitioner continued to be eligible for Medicaid for six months following the termination of her ANFC pursuant to WAM § M300.2B.

<sup>2</sup> At the hearing the petitioner was advised to reapply for Medicaid when her husband returns to the household.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid regulations provide that an individual is eligible for Medicaid if he or she meets the corresponding criteria for eligibility for ANFC. Medicaid Manual (MM) § 300.2A. "Categorical" ANFC eligibility must be based on the absence, disability, or incapacity of a parent. In cases of unemployment or incapacity the income of both parents living in the household is considered available to the household in determining financial eligibility. Because of this, the petitioner seeks eligibility based on the alleged "absence" of her husband from her home.

W.A.M. § 2331 defines absence as follows:

Continued absence of a parent refers to physical absence of a parent from the home for one of the following reasons, the nature of which interrupts or terminates the parent's functioning as a provider of maintenance, physical care or guidance for the child.

. . .

Informal separation of parents without benefit of legal action.

. . .

As was noted in Fair Hearing No. 16,086 involving this petitioner, the Board has repeatedly held that "absence" under the above definition is normally established whenever one parent does not reside with the other. However, the Board has

also ruled that when absences appear to be contrived or deliberate the Department can look to the relationship of the parents to each other to resolve the question of whether the "absence" affects the degree of support, care, and guidance the allegedly-absent parent provides for the child. See Fair Hearings No. 9405, 8869, 8774, 8427, 6877, and 6111.

As discussed above, the petitioner in this matter freely admits that she and her husband are not "separated" in a marital sense. She further admits that her husband's decision to live in New York is with her complicity and is solely due to a perceived economic benefit. At the hearing in this matter, the petitioner was again advised that if she wishes to maintain that she and her husband are separated for purposes of ANFC or Medicaid, the regulations require her to assign her right to child support to the Department and cooperate with the Department in pursuing it from her husband. See W.A.M. § 2331.31. As was the case in Fair Hearing No. 16,086, the petitioner has indicated she does not want to do this.

The petitioner does not dispute that if her husband's income is included in her eligibility determination for Medicaid, she is over income. See MM. § M350 et seq. Under the circumstances, as was the case in Fair Hearing No. 16,086 regarding her ANFC, it must be concluded that unless and until the petitioner declares herself separated from her husband, and agrees to allow the Department to pursue child support

from him, she cannot be eligible for a separate grant of Medicaid for herself.

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